IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 537 OF 2005

ANOKHILAL ITBARI BALMIKI (Since deceased)

1A. SURESH ANOKHILAL VALMIKI & ORS.. APPELLANTS

Vs.

THE BOMBAY MUNICIPAL CORPN. & ORS. .. RESPONDENTS

Mr. Suresh Gole with Smt. Shanti Kadam for appellants

Mr. J. Xavier for BMC

CORAM:-SMT. RANJANA DESAI, J.

DATED:-13-4-2005

P.C.

Admit. Respondent waives service. By consent of the parties taken up for hearing forthwith. The heirs of original plaintiff have challenged in this first appeal judgment and order dated 21/2/05 passed by the City Civil Court at Mumbai in L. C. Suit No. 1924 of 1999.

2. The original plaintiff filed L.C. Suit No. 1924/88 praying for a declaration

that the notice dated 30/10/86 issued by the defendant Corporation under Section 351 of the Muncipal Corporation Act is ultravires, bad in law and void and for an order of injunction restraining the defendant Corporation from taking action pursuant to the suit notice. After his death the present appellants seem to have been brought on record and they have prosecuted the suit.

3. The case of the plaintiffs in short is that they are in occupation, possession and enjoyment of the suit structure since 1958 till today without any obstruction from anybody. They are the heirs deceased Anokhilal Balmiki. According to the plaintiffs their uncle Devilal was employed by the owners of Chheda Sadan as a safaiwala in the year 1958. The said Devilal used to work as safaiwala in the said building since 1959. Khembhadur Manekji Hodiwala, who purchased the said building gave the suit structure to the said Devilal for his residential purpose and since then the said structure is in existence. Deceased Anokhilal joined the said Devilal in the year 1958 and used to help his uncle Devilal. In the year 1959 Hodiwala sold the said property to Smt. Najma Ebrahim. The services of said Devilal continued and said Najma Ebrahim started paying Devilal an amount of Rs.75/- per month. Deceased Anokhilal was residing in the suit structure along with his uncle Devilal. He used to help his uncle Devilal in the work. In the year 1966 the said property was

purchased by Mehta Charity Trust and Mehta Charity Trust also continued the services of Devilal. The said Mehta Charity Trust on 30/1/87 disposed of the said property to Khimji Meghji Chheda. In the year 1969 uncle of Shri Devilal left the service and went to his village. However, owner Chheda continued the services of Anokhilal and since 1969 Anokhilal was in the employment as a safaiwala and was attending to the work. Chheda allowed Anokhilal and members of his family to continue to stay in the suit structure. Thus it is the case of the plaintiffs that they are in the suit premises much prior to the datum line i.e. 17/4/64.

4. The defendant Corporation filed its written statement. The Corporation refuted the case of the plaintiffs. According to the Corporation the suit structure is situated in the compulsory open space of the building and is totally unauthorised. The Corporation contended that the suit premises were demolished on 18/12/87. However, the plaintiffs reconstructed them. The plaintiffs examined Rakesh Walmiki. The defendant did not examine any witness. However, the defendant cross-examined Rakesh Walmiki. The trial court dismissed the suit hence this appeal.

5. I have heard at considerable length Mr. Gole, learned counsel for the appellant and learned counsel for the Corporation.

6. In my opinion, this appeal has no substance. The impugned order indicates that there is not a single document produced by the plaintiffs to

indicate that they were in occupation of the suit premises prior to the datum line. A milk card is produced, however, that does not indicate that the plaintiffs were in occupation of the suit premises prior to the datum line. Address of the plaintiffs is not mentioned on the said card. The plaintiffs have produced a notice issued by the Land Acquuisition Officer. This document also does not indicate that the plaintiffs were residing in the suit premises and they were there prior to the datum line. It is dated 18/8/89. The assessment extract shows that the suit structure is assessed from 1980. The trial court has noted that the xerox copies of money order slips are of 1967. On plaintiff 1-B's school leaving certifickate his birthdate is shown as 6/6/68. Address of the suit premises is not mentioned in it. Ration card is issued in 96. The earlier ration card shows that it was issued in 1984. Evidence of Rakesh Walmiki does not help the plaintiffs at all. In view of this it is not possible to accept the plaintiff's case that the suit structure was in existence prior to datum line and is authorised. The appeal will have to be dismissed.

7. I may note that according to Mr. Xavier, learned counsel for the Corporation, the suit premises were demolished. Mr. Gole disputes the same.

8. The appeal is dismissed.